

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§	
	§	No. 319, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9609015504
Appellee.	§	

Submitted: June 9, 2009

Decided: June 29, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 29th day of June 2009, it appears to the Court that:

(1) On June 2, 2009, the Court received James Arthur Biggins' untimely notice of appeal from the Superior Court's denial of postconviction relief docketed on April 29, 2009. Pursuant to Supreme Court Rule 6, Biggins' notice of appeal should have been filed on or before May 29, 2009.¹

(2) On June 2, 2009, the Clerk issued a notice directing that Biggins show cause why the appeal should not be dismissed as untimely filed.² In response to the notice, Biggins contends that he mailed the notice of appeal before the May 29

¹ Del. Supr. Ct. R. 6(a)(iii).

² Del. Supr. Ct. R. 29(b).

filing deadline, and that he should be given credit for the weekends and holiday occurring in May.

(3) Biggins' contentions are unavailing. "Time is a jurisdictional requirement."³ Under Delaware law, a notice of appeal must be received by the office of the Clerk within the applicable time period to be effective.⁴ Unless an appellant can demonstrate that the failure to timely file a notice of appeal is attributable to court-related personnel, an untimely appeal cannot be considered.⁵

(4) Biggins does not contend, and the record does not reflect, that his failure to timely file the notice of appeal in this case is attributable to court-related personnel.⁶ Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.⁷

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

³ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

⁴ Del. Supr. Ct. R. 10(a).

⁵ *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

⁶ *See Deputy v. Roy*, 2004 WL 1535479 (Del. Supr.) (dismissing untimely appeal after concluding that delay in prison mail system cannot justify enlargement of jurisdictional appeal period).

⁷ Biggins' "motion for expansion record" and "motion for documents" filed on June 17, 2009 are denied as moot.